IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 13TH SEPTEMBER 2006 / 22ND BHADRA 1928

OP.No. 22075 of 2002(C)

PETITIONER:

BODHANANDA SEVA SOCIETY,
REPRESENTED BY ITS SECRETARY,
DR.M.N.SREEDHARAN NAIR, KALADY, KARAMANA,
THIRUVANANTHAPURAM.

BY ADV. SRI.P.GOPALAKRISHNAN NAIR

RESPONDENTS:

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1. **STATE OF KERALA,**
   REPRESENTED BY ITS CHIEF SECRETARY,
   SECRETARIAT, THIRUVANANTHAPURAM.

2. **THE DISTRICT COLLECTOR,**
   THIRUVANANTHAPURAM.

3. **THE TAHSILDAR,**
   THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.M.K.ABOOBACKER

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 13/09/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. NO.37875/2002 IN OP. NO.22075/2002

DISMISSED

13.9.2006 **SD/- C.N.RAMACHANDRAN NAIR, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE CERTIFICATION OF REGISTRATION SL.NO.496/90 DT.11.7.1990.

EXT.P2:- COPY OF THE RELEVANT EXTRACT OF THE MEMORANDUM OF ASSOCIATION.

EXT.P3::- COPY OF THE ORDER NO.A3/1197/94 DT.21.1.1994 FROM THE 3RD RESPONDENT.

EXT.P4:- COPY OF THE REPLY LETTER FROM THE PRESIDENT OF THEASHRAMAM TO THE 2ND RESPONDENT DT.15.11.99.

EXT.P5:- COPY OF THE NOTICE NO.B-I 47262/98 DT.6.7.01 FROM THE 2ND RESPONDENT.

EXT.P6:- COPY OF THE LETTER FROM THE PRESIDENT OF THE ASHRAMAM TO THE 2ND RESPONDENT DT.18.7.01.

EXT.P7:- COPY OF THE PETITION FILED BY THE PRESIDENT OF THEASHRAMAM BEFORE THE 2ND RESPONDENT DT.2.4.02.

EXT.P8:- COPY OF THE PETITION FILED BEFORE THE GOVERNMENT BY THE PRESIDENT OF THE ASHRAMAM DT.6.5.02.

EXT.P9:- COPY OF THE DEMAND NOTICE NO.BI/47262/98 DT. NIL FROM THE 2ND RESPONDENT.

EXT.P10:- COPY OF THE PETITION FILED BY PRESIDENT OF ASHRAMAM TO THE 2ND RESPONDENT DT.8.5.02.

EXT.P11:- COPY OF THE DEMAND NOTICE NO.BI.22461/97 DT.20.6.02 ISSUED BY THE 3RD RESPONDENT.

/TRUE COPY/

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C.N.RAMACHANDRAN NAIR, J.

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O.P. No.22075 of 2002

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Dated this the 13th day of September, 2006.

JUDGMENT

The petitioner is challenging recovery proceedings for recovery of arrears of rent payable for 3.2 cents of puramboke land ordered to be leased to the petitioner under Ext.P3 order dated 21.1.1994. It is obvious from Ext.P3 that the terms of lease particularly, rent are conveyed to the petitioner only vide Ext.P3. The last paragraph of Ext.P3 clearly states that if petitioner is interested, petitioner has to enter into agreement with the Government on a fifteen rupees stamp paper. While the case of the petitioner is that petitioner never accepted the lease by entering into agreement, Government Pleader submitted that whether there is an agreement is a matter for verification. Even though counsel for the petitioner contended that rent is excessive, on account of the locational disadvantages, want of road facility, land being river puramboke land liable to be submerged during monsoon etc., there is no scope for this court considering the propriety of the amount of lease rent if petitioner has entered into agreement undertaking to pay the lease rent. In the circumstances, I hold that if petitioner has entered into agreement in terms of Ext.P3 and accepted lease, then rent can be recovered to the extent covered in the agreement. This is a matter for verification by the District Collector. Besides this, I find lease was only for three years which would have expired in 1997. Ext.P3 specifically concedes the land is 3.2 cents of river puramboke land lying

contiguous to petitioner's property and petitioner is a charitable institution run by ladies. Therefore, this may be a fit case for considering assignment of the small extent of puramboke land to the petitioner or otherwise it's possible encroachment by undesirable elements will cause a threat to the peaceful functioning of the petitioner-organisation. Therefore, I direct the District Collector to consider assignment of the land to the petitioner under the Land Assignment Act or fresh lease in accordance with norms. I also make it clear that the District Collector should be considerate in fixing the value because the organisation is a charitable one and it will be open to the District Collector to consider the objects of the organisation and the actual benefit it renders to the public while considering application for assignment. The O.P. is disposed of as above leaving freedom to the respondents to proceed for recovery of amount due under Exts.P3 and P11 demand only if arrears of rent are payable in accordance with written agreement if any entered into between the petitioner and respondents and in the absence of any agreement signed by the petitioner, no recovery can be made under Ext.P3 which is in effect only a proposal. It will be open to the Collector to retrieve possession of the property if it is held by the petitioner without any authority. However, the respondents will ensure that the property is not encroached by anybody. I also make it clear that before proceeding with recovery based on written agreement, a copy of the agreement should be furnished by the respondents to the petitioner.

C.N.RAMACHANDRAN NAIR
Judge

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